

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.127/1993
(Onkar Lal Vs. Smt. Bulak Bai)

Date of order : 21.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vineet Jain, for the petitioner.
Mr. R.S. Mankad, for the respondent.

Heard learned counsel for the parties.

By way of filing the present revision petition, the petitioner has challenged the order dated 6.11.1992 passed by Judge, Family Court, Udaipur, granting maintenance to respondent Smt. Bulak Devi @ Rs.300/- per month and her minor daughter Ms Kusum @ Rs.200/- till the date of her attaining majority.

Learned counsel for the petitioner submitted that the order passed by Judge, Family Court, Udaipur is erroneous because he has not rightly appreciated the facts of the case. It is also submitted that

income of the petitioner as has been assessed by the Family Court is also erroneous because he is not in any service and while doing business he is only earning Rs.2000/- to Rs.3000/- per month. It is also admitted position of the case that Dinesh - son of the petitioner is earning member of the family. Thus, all these aspects of the matter were to be considered by learned Family Court but learned trial Court has failed to appreciate the entire evidence. Learned counsel for the petitioner vehemently argued that the finding with regard to monthly income of the petitioner is erroneous and thus the order of granting maintenance to wife and daughter deserves to be set aside. Alternatively, it is prayed by the learned counsel for the petitioner that if this Court ultimately comes to the conclusion that maintenance has rightly been granted by Family Court, then, the same may be allowed from the date of judgment and not from the date of filing application under Section 125 Cr.P.C.

Learned counsel for the non-petitioner vehemently opposed the prayer and contended that learned Family Court has rightly arrived at with the finding that the petitioner is earning from wholesale business of vegetables, oil and clothes. Thus, it is clear that very meagre amount of monthly maintenance has been allowed by Family Court, which does not require any interference by this Court. Learned

counsel for the non-petitioner also prayed that in these circumstances the prayer for allowing monthly maintenance from the date of passing judgment and not from the date of filing application does not require to be considered by this Court and the revision petition deserves to be dismissed.

I have considered the rival submission made by both the learned counsel for the parties.

The Family Court after appreciating the entire evidence on record has only allowed monthly maintenance of Rs.300/- per month in favour of wife and Rs.200/- per month in favour of daughter on the ground that the petitioner is doing business of wholesale. The finding given by Family Court does not require any interference by this Court. However, looking to the facts and circumstances of the case and pendency of litigation since 1988 as well as the fact that at the time of hearing of the revision, the petitioner was ordered to pay Rs.10,000/- to the respondent, it is appropriate to modify the order impugned dated 6.11.1992 passed by Family Court to allow monthly maintenance from the date of judgment i.e. 6.11.1992.

In these circumstances, while upholding the finding given by Family Court with regard to liability of maintenance of the petitioner, this petition is

partly allowed and the order with regard to payment of monthly maintenance from the date of filing of application under Section 125 Cr.P.C. i.e. 18.7.88 till passing of judgment dated 6.11.1992 is set aside and the petitioner is directed to pay regular monthly maintenance from the date of judgment and if any arrear still remains to be paid from the date of passing judgment, the same shall be paid to the respondent within a period of six months.

(GOPAL KRISHAN VYAS), J.

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